



Testimony of Gabby Bruno  
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Ford Motor Company

Before the House Tax Policy Committee of the  
Michigan Legislature

Hearing on House Bill 5098

August 25, 2005

Mr. Chairman and Members of the Committee:

### **Introduction**

Good morning, Chairman Sheen and other members of the Committee. It is my pleasure to be here today to discuss House Bill 5098. My name is Gabby Bruno and I am the manager of state tax policy for Ford Motor Company.

I would like to commend the chairman and members of this committee for continuing to push toward the ultimate goal of Michigan tax reform that will provide much needed relief to Michigan job providers and manufacturers, in particular. We have faith that this committee will reach an ultimate resolution that will help Michigan stem its manufacturing job losses.

While we are supportive of the overall goal of Michigan tax reform, Ford is concerned with Sections 79 and 79a contained within House Bill 5098, dealing with business loss carryforwards. These provisions would have a significant negative impact on Ford Motor Company. Specifically, the provisions are ambiguous as to how loss carryforwards would be treated upon the merger or liquidation of an entity. Ford is currently trying to become more efficient and streamline its operations. This often involves restructuring transactions involving mergers or liquidations. The way the bill is currently drafted, it could be interpreted to say that a liquidated company's loss carryforwards simply disappear upon liquidation, as opposed to being transferred to the surviving entity. This result seems unfair and is inconsistent with federal treatment. The language in Section 79 should be clarified to address this.

The language in Section 79 should also be clarified to state that this limitation will only be applied on a prospective basis.

Section 79a is also harmful to Ford in that it limits the use of losses simply because an entity has elected disregarded status. Michigan has an RAB (1999-9) that asserts that it follows the federal treatment with respect to disregarded entities. This limitation is directly contrary to following

federal treatment and thus, goes against Michigan's own RAB. It adds an additional element of complexity by not fully conforming to the federal treatment of these entities. We recommend deleting this section in its entirety since it even goes beyond any limitations currently imposed at the federal level (or in any state that we are aware of).

### **Business Loss Carryforwards Are Not a Loophole**

It is also important to note that business loss carryforward provisions are in no means a loophole. The business losses at issue here are legitimate deductions. It is surprising that these loss carryforward limitations are contained in this package of loophole closures, when several other items that are much closer to being a true "loophole" than this are not being addressed at all in this package.

Restricting the future use of legitimate losses is not the right solution. If the concern is that taxpayers' are maximizing the use of loss carryforwards by somehow manipulating when affiliates are or are not part of the combined return – a better solution would be to look at Michigan's combined return rules. Michigan's combined return rules are very restrictive and are unlike any other states. The concern involving loss carryforwards would be substantially eliminated if Michigan allowed or required all affiliates with Michigan nexus to be included in the combined return.

### **Recommendation**

Ford does not believe that restricting the use of legitimate future losses is the right way to address a much broader problem involving Michigan's combined return rules. Why would the State want to disproportionately punish companies that are already struggling by placing additional restrictions on the use of their losses? At a minimum, however, Sec. 79a should be eliminated entirely and Sec. 79 should be modified to clarify that this treatment is prospective only and that losses do not simply disappear when a company liquidates, but are transferred to the surviving company, which is consistent with federal treatment.

Thank you for your time.